



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2013

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Ms. Raethella Jones
Assistant District Attorney
County of Brazoria
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2013-08806

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 488604.

The Brazoria County Sheriff's Department (the "department") received a request for computer aided dispatch records from the patrol division during a specified time period. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.

Initially, we note the requestor seeks computer aided dispatch records from the patrol division during a specified time period. You have submitted only a list of the records the department maintains but not the records themselves. We find the submitted list is not responsive to the request for information. This ruling does not address the public availability of non-responsive information, and the department need not release it in response to this request. Further, although you state you have submitted a representative sample of the requested dispatch records, we find the submitted list is not representative of the requested dispatch records. Accordingly, we must address the department's obligations under the Act.

Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to

submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). As noted above, you have submitted only a list of the requested records, not a copy or representative sample of the records themselves. Accordingly, we find you have failed to comply with the procedural requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. You assert the requested information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). In failing to comply with the requirements of section 552.301, you have waived the department's claim under section 552.103, and the department may not withhold the requested information under section 552.103. Thus, we have no choice but to order the requested information released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristi L. Wilkins". The signature is fluid and cursive, with the first name "Kristi" and last name "Wilkins" clearly distinguishable.

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 488604

Enc. Submitted documents

c: Requestor
(w/o enclosures)

JAN 14 2014

At 8:57am M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GN-13-002102

JERI YENNE, CRIMINAL	§	IN THE DISTRICT COURT OF
DISTRICT ATTORNEY OF	§	
BRAZORIA COUNTY, TEXAS,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	98th JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY	§	
GENERAL OF TEXAS	§	TRAVIS COUNTY, TEXAS
<i>Defendant.</i>		

AGREED FINAL JUDGMENT

This is an open records lawsuit brought under the Public Information Act (PIA), Tex. Gov't Code ch. 552. All matters in controversy between Plaintiff Jeri Yenne, Criminal District Attorney of Brazoria County, Texas (the District Attorney) and Defendant, Greg Abbott, Attorney General of Texas (the Attorney General) have been resolved, and the parties agree to the entry and filing of an agreed final judgment.

Texas Government Code section 552.325(d) requires the Court to allow the requestor of information a reasonable period of time to intervene after notice of the intent to enter into settlement is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent notice by certified letter to the requestor, Mr. Gregory B. Cagle, on Dec. 20, 2013, providing reasonable notice of this setting (see attached certified mail receipt). The requestor was informed of the parties' agreement that District Attorney may withhold the information at issue in this suit. The requestor was also informed of his right to intervene in the suit to contest the withholding of the information. The requestor has neither informed the parties of his intention to intervene, nor has a motion to intervene been filed.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties in this suit.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The District Attorney and the Attorney General have agreed that, in accordance with the PIA and under the facts presented, the information at issue in this suit is excepted from disclosure pursuant to Tex. Gov't Code § 552.103;
3. All court costs and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between the District Attorney and the Attorney General in this cause and is a final judgment.

SIGNED this 14th day of January, ~~2013~~ ²⁰¹⁴

AGREED:

Raethella Jones
RAETHELLA JONES
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Assistant District Attorney
Brazoria County Criminal District
Attorney
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ATTORNEY FOR PLAINTIFF

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JUDGE PRESIDING
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ATTORNEY FOR DEFENDANT